IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8276 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAI SHRI BHAIRAVNATH SEVA TRUST

Versus

A.M.C.

Appearance:

1. Special Civil Application No. 8276 of 2004

MS AVANI S MEHTA for Petitioner No. 1

Mr.S.I.Nanavati,senior counsel, with

Mr.Sanjiv Dave for

NANAVATI & NANAVATI for Respondent No. 1

Mr.S.P.Hasurkar, learned AGP, for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 28/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Amendment prayed for is granted.

2. Rule. Mr. Sanjiv Dave waives service of rule on behalf of respondent Corporation. Mr. S.P.Hasurkar, learned AGP, waives service of rule on behalf of respondent No.2. Heard Mr.S.I.Nanavati, learned senior advocate, who is appearing for respondent No.1 Corporation. By consent of the counsel appearing in the matter, rule is fixed forthwith.

3. The petitioner Trust had approached this court for seeking relief for restraining the respondents from demolishing the shops and garages situated in Final Plot Nos.164 and 165 at Moje Asarwa, T.P.Scheme No.8, Taluka City Ahmedabad. At the initial stage, the petitioner Trust has moved this court by filing affidavit of Mr.Multanbhai N.Ode, Secretary of the Petitioner Trust dated 13.7.2004 and while filing the petition, the petitioner has annexed various documents, including the Trust Deed and the application submitted to the Collector in respect of grant of land in the year 1978 and a fresh application which was submitted to the Collector on 8.2.2004. The petitioner has also annexed the property tax bill issued by the Corporation and other documents.

4. Considering the urgency in the matter, we have permitted urgent circulation and the copy of the petition was directed to be served on the counsel, who appeared for the respondent Corporation and accordingly as per order dated 13.7.2004, we have kept the matter for hearing on 15.7.2004 and during hearing Mr.Sudhir Nanavati, learned senior advocate, had appeared on behalf of respondent Corporation.

5. We have heard Ms. Avani Mehta, learned advocate, who appeared on behalf of petitioners and Mr.Sudhir Nanavati, learned senior counsel, on behalf of respondent No.1 Ahmedabad Municipal Corporation and Mr. Hasurkar, learned AGP, for respondent No.2 - District Collector Ahmedabad. Ms.Mehta appearing for the petitioners has in term submitted before us that the petitioners have approached this court for seeking breathing time to find out other suitable place as the respective petitioners are doing their business by paying rent to the Trust, namely, petitioner No.1 herein and as they are running their business, they need time to shift their place of

business by handing over the site to the Corporation as admittedly the land in question is belonging to A.M.C. and as per the T.P.Scheme the land is ear marked for use as a Garden. Ms. Mehta has also admitted that the Trust has by putting construction on the land of the Corporation given the sheds (shops) in favour of its tenants and such construction has been put in a land belonging to Corporation and admittedly the land is encroached upon by the Trust.

6. When the matter was before us, we have protected the petitioners. The petitioners have also tendered individual undertaking that they will take away their belongings and hand over the site to the Corporation within three months from the date of the order. Each petitioner has submitted his undertaking, which are taken on record and copies of which were duly served on the respondents. As per the permission granted, this petition is also amended and amended petition is duly served on the respondents and in view of the amended petition, though originally the petition was filed by Jai Shri Bhairavnath Seva Trust, the persons occupying the shops/garages were joined in this petition and these petitioners are petitioners Nos.2 to 11. These petitioners have individually filed undertaking dated 27.7.2004 and as per the undertaking, each petitioner will remove his belonging and he will hand over the possession of the land to the Corporation within three months from the date of the order and in between they will create no right of 3rd person by transferring their shops/garages and even the family members will not object for handing over the land to the Corporation. Ms. Mehta has accordingly submitted before us that purpose for filing this petition is that they will be given breathing time to vacate the place to find out suitable accommodation so that the petitioners can start business at the new place and on humanitarian ground she has prayed that even as per the instruction received by her from individual petitioner, they will vacate and clear the encroachment within three months from the date of the order. In view of this, admittedly the land in question is reserved for garden under the T.P.Scheme and the land is belonging to Corporation.

7. As per order dated 15.7.2004 after hearing the counsel appearing for the parties, we have passed a detailed order and we have protected the petitioners by granting order of status quo in respect of the land in which the petitioners were carrying out their business and we have also permitted the Corporation for using the land for plantation in the remaining land without

disturbing the possession of the petitioners.

8. It is very clear that the petitioners are on the land belonging to the Corporation and the said land vests with the Corporation and as per the T.P. Scheme the land is ear marked for garden.

9. An affidavit in reply is filed on behalf of respondent Corporation through Incharge Deputy Estate Officer (North Zone) dated 15.7.2004 in which the Corporation has dealt with the contentions raised in this petition, even challenging the status of the petitioner Trust. However, we are not required to deal with the same in view of the fact that the petitioners have themselves agreed to vacate the premises and clear the encroachment by handing over the site to the Corporation, as the land in question is reserved for garden as per the T.P.Scheme. There is an ancient temple found on the land and admittedly this petition is filed for seeking protection in respect of the shops/garages constructed by the Trust, which were given on rent to the respective petitioners. Near the temple there are various Samadhis of Sadhus. Mr. Nanavati appearing for the respondent Corporation under instructions from the Corporation has in term stated before us that the Corporation is not intending to remove the temple in question, which is existing since many years (300 years). In view of this fact, when the petitioners have approached on humanitarian ground for seeking protection in respect of shops/garages occupied by them for running their business and as they are seeking time to vacate the place of business by clearing the encroachment and further as they will remove their belongings and clear the site and hand over the possession to the Corporation and to that effect an undertaking is filed by each petitioner in these proceedings, we are of the view that the time sought for by the petitioners is found to be very reasonable and according to us that while dismissing the petition it is made clear that the petitioners have no legal right to occupy the land belonging to the Corporation, which is ear marked for garden. When the petitioners have approached on humanitarian ground for seeking time for three months, we are inclined to protect the petitioners to enable the petitioners to find out alternative site and accordingly interim relief granted earlier is extended in the same terms upto 30.11.2004 and the petitioners, as per their undertakings, shall hand over the vacant & peaceful possession of the land to the Corporation without any hindrance. Rule is accordingly discharged with no order as to costs.

Dt:28.7.2004 (D.K.Trivedi,J)

(K.M.Mehta,J)

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